November 18, 2002

Ms. Tamara Preiss, Division Chief,
Pricing Policy Division, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte

In the Matter of CompTel Petition for Rulemaking
Re: Presubscribed Interexchange Carrier Charges
CC Docket No. 02-53
CCB/CPD No. 01-12
RM-10131

Dear Ms. Preiss:

When the Commission received CompTel's Petition to revise its Presubscribed Carrier Change Charge ("PIC Change Charge") policies,[1] several local exchange carriers ("LECs")[2] recommended that the Commission do nothing. Even though the Commission rejected those arguments[3] and initiated this proceeding, the LECs - which profit greatly from the Commission's existing policies – have failed to do anything other than to

[1] CompTel Petition for Rulemaking, *In the Matter of Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges*, (May 16, 2002).
[2] *See*, "Comments of SBC Communications, Inc.;" *In the Matter of Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges*, CCB/CPD 01-12; RM No. 10131 (June 18, 2001); "Reply Comments of SBC Communications, Inc.," *In the Matter of Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges*, CCB/CPD 01-12; RM No. 10131; "Cincinnati Bell Telephone's Comments to CompTel Petition for Rulemaking," *In the Matter of Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges*, CCB/CPD 01-12; RM No. 10131 (June 18, 2001); and "Reply Comments of Verizon," *In the Matter of Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges*, CCB/CPD 01-12; RM No. 10131(July 2, 2001).
[3] *See generally*, Order and Notice of Proposed Rulemaking, *In the Matter of Presubscribed Interexchange Carrier Charges*, FCC 02-79; CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (March 20, 2002)("Order and Notice of Proposed Rulemaking").

present the same tired arguments. The time has come for the Commission to act and, as before, reject these arguments. Additionally, the time has come for the Commission to revise its PIC Change Charge policies to reflect the actual costs associated with a change, thereby removing the inflated PIC Change Charge as a burden upon consumers and carriers and a barrier to competition. Finally, the Commission should eliminate the PIC Change Charge *in its entirety* where an interexchange carrier ("IXC") acquires, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base, when the selling carrier has declared bankruptcy.

The Current $5.00 Safe Harbor PIC Change Charge Impedes Competition

Despite the LECs' claims to the contrary, the PIC Change Charge presents a barrier to competition. LECs argue that because some IXCs pay the PIC Change Charge on behalf of their subscribers, the charge is *ipso facto* reasonable. For example, Beacon Telecommunications Advisors writes, "Given the history and willingness of IXCs to [pay the PIC Change Charge or have it credited to a customer bill once that customer has switched], it seems appropriate that the current PIC Change Charge is [just and reasonable]."[4] Similarly, Verizon Communications, Inc. ("Verizon") claims, "The near universality of the interexchange carriers' willingness to pay [the PIC-change charge] on behalf of their newly won customers reflects the fact that it does not inhibit their ability to market their services."[5] Such arguments confuse, rather than illuminate, the issue. The issue is not whether IXCs have paid the inflated PIC Change Charge in order to facilitate subscriber acquisitions. The issue before the Commission is whether IXCs and

[4] Comments of Beacon Telecommunications Advisors, LLC, *In the Matter of Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (June 14, 2002) at 3.
[5] Comments of Verizon, *In the Matter of Presubscribed Interexchange Carrier Charges*, FCC 02-79; CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (June 14, 2002)("Verizon Comments") at 3.

consumers should *have* to pay a premium to LECs simply because a subscriber has chosen to switch his long distance carrier. When the issue is framed in this manner, the conclusion is clear: no one should be penalized for promoting or taking advantage of a competitive market.

The anti-competitive harm caused by the inflated PIC Change Charge will increase as the interexchange marketplace becomes more competitive. While Sprint Corporation ("Sprint") suggests that, "It is because the PIC-change charge represents a small piece of the overall acquisition and lifetime costs of a potential long distance customer that a carrier may choose to cover this charge on the customer's behalf[,]"[6] the fact of the matter is that increased competition has accelerated customer churn and shortened the period a subscriber stays with a particular IXC, thus reducing the period for carriers to recover switching costs paid to acquire a subscriber. As Verizon concedes, "[T]he churn rate for presubscription is approximately 30 percent in the Verizon region."[7] Even Sprint concedes that "[t]he long distance market is characterized by high churn rates[.]"[8] As customer churn increases, the investment made by IXCs that pay their new subscribers' PIC Change Charge becomes an increasingly risky proposition. As a result of this increased burden, many IXCs have begun placing the burden of paying for the PIC Change Charge upon the affected consumers.

Furthermore, paying the PIC Change Charge is not an "option" for carriers acquiring all or part of another carrier's subscriber base. When an IXC acquires all or part of another carrier's subscriber base, the acquiring carrier must remit the carrier

[6] Comments of Sprint Corporation , *In the Matter of Presubscribed Interexchange Carrier Charges*, FCC 02-79; CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (June 14, 2002)(Sprint Comments) at 5.

[7] Verizon Comments at 3.

change fee on behalf of its new subscribers.[9] Thus, there is nothing "optional" about the charge where a subscriber is acquired through a subscriber base acquisition. The PIC Change Charge is a factor that may determine whether a bankrupt carrier or a carrier exiting a particular market is able to transition its subscriber base to a new carrier or whether its subscribers risk being discontinued as a result of the failure to find an acquiring carrier willing to pay PIC Change Charges associated with each new customer. The Commission is presently faced with the possibility of at least one major IXC transferring potentially millions of subscribers to another carrier as a result of bankruptcy. Under present Commission regulations, the acquiring carrier would be forced to pay potentially tens of millions of dollars in PIC Change Charges as a result of this acquisition. These millions of dollars present a tremendous burden to the acquiring carrier and may, in fact, prevent the acquisition entirely, thus harming subscribers. Alternatively, the acquiring carrier might simply pay millions of dollars less to acquire the subscriber base in order to account for the millions in PIC Change Charges it will be compelled to remit, thus harming the bankrupt carrier's creditors. The Commission must revise its PIC Change Charges to ensure that these charges do not inflate the cost of subscriber acquisition so as to preclude the acquisition of subscribers from ailing or bankrupt carriers. Therefore, IDT requests that the Commission eliminate the PIC Change Charge *in its entirety* where an IXC acquires, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base, when the selling carrier has declared bankruptcy.

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[8] Sprint Comments at ii.
[9] 47 CFR § 64.1120(e)(3)(iii).

The harm the PIC Change Charge causes IXCs is further compounded by the fact that it does not equally harm acquiring LECs. Thus, the charge presents a competitive disparity in favor of LECs. This disparity is found where a LEC's local service subscriber switches to the LEC for its interexchange service. IDT shares the concern of WorldCom that, "[E]ven when the customer switches to the ILEC's affiliate long distance services, the ILEC is not harmed by an excessive [PIC change] rate. The ILEC could readily reimburse the customer to entice them to switch to the long distance affiliate, and only incur the actual cost of the switch thereby obtaining a significant competitive advantage in the long distance market."[10] While IDT agrees with NASUCA that "[T]he Commission should direct that when a LEC charges the PIC Change Charge to unaffiliated IXCs, the ILEC must assess the charge when the IXC is an affiliate[,]"[11] this is not enough: the only way to eliminate the anti-competitive harm faced by IXCs is to reduce the PIC-change charge to cost and apply it equally to all acquiring carriers.

The Commission Should Not Rely On Market Forces To Ensure Reasonable PIC Change Charge Rates

In its Order and Notice of Proposed Rulemaking, the Commission asked whether market forces will constrain PIC Change Charges to reasonable levels.[12] IDT agrees with the several commenters that, "'Market forces' will simply not constrain ILECs in their imposition of these charges."[13] As the Commission noted, "Under current network

[10] WorldCom's Comments, *In the Matter of Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (June 14, 2002)("WorldCom's Comments") at 3.
[11] Comments of the National Association of State Utility Consumer Advocates, *In the Matter of Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (June 14, 2002)("NASUCA Comments") at 9 (footnote omitted).
[12] Order and Notice of Proposed Rulemaking at ¶ 14.
[13] NASUCA Comments at 6; *See also,* AT&T Comments, *In the Matter of Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (June 14, 2002)("AT&T Comments") at 4-5; Comments of the Association of Communications Enterprises, *In the Matter of*

configurations, a PIC change must be completed by the end user's LEC."[14] Thus, since neither the end user nor the end user's new carrier have any choice as to the carrier that will undertake the PIC change, the subscriber's LEC effectively has "bottleneck" control over this service required by the subscriber if she wants to change her presubscribed long distance carrier. As such, the Commission should undertake careful scrutiny of LEC rates for this service, so as to ensure that neither the subscriber nor the new long distance provider (depending on which is paying the charge) is charged unreasonable rates.

The Commission's recent actions regarding the bottleneck facilities of competitive local exchange carriers provide guidance as to how it should approach the issue in the present proceeding. In the Commission's CLEC Access Charge Reform Order,[15] the Commission stated:

> Tariffs require IXCs to pay the published rate for tariffed CLEC access services, absent an agreement to the contrary or a finding by the Commission that the rate is unreasonable. It appears that certain CLECs have availed themselves of this rule and have refused to enter meaningful negotiations on access rates, choosing instead simply to file a tariff and bind the IXCs receiving their access service to the rates therein. CLEC use of this strategy raises questions about the extent to which CLECs truly are subject to competition in their provision of access service.[16]
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> [O]nce an end user decides to take service from a particular LEC, that LEC controls an essential component of the system that provides interexchange calls, and it becomes the bottleneck ….[17]

Presubscribed Interexchange Carrier Charges, CC Docket No. 02-53; CCB/CPD File No. 01-12; RM-10131 (June 14, 2002)("ASCENT Comments") at 16; and WorldCom's Comments at 2-3.

[14] Order and Notice of Proposed Rulemaking at ¶ 14.

[15] Seventh Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262; FCC 01-146 (Rel. April 27, 2001)("*CLEC Access Charge Reform Order*").

[16] *Id.* at ¶ 28.

[17] *Id.* at ¶ 30.

The above paragraphs can easily apply to the present matter and, if done so, would compel the Commission to reach the same conclusion: "the market … does not appear to be *structured* in a manner that allows competition to discipline rates."[18]

PIC Change Charges Should Be Cost Based

Many IXC commenters present a persuasive argument that the PIC Change Charge should be cost based.[19] IDT supports these arguments although we are concerned that LECs will attempt to place so many unrelated costs into the Charge as to negate the consumer and competitor benefit of a cost proceeding. Additionally, we are aware that "The $5.00 charge was never based purely on cost …"[20] although we disagree that simply because the charge was not initially set up as cost-based that it may never be changed as such. We agree that "Carriers, the Commission and consumer advocates alike have vastly more experience with cost analysis, particularly incremental cost analysis, today than in 1984[,]"[21] and we believe that the Commission's pro-competitive policies favor the elimination of an inflated PIC-change charge. IDT supports WorldCom's recommendation that "[T]he Commission should evaluate the ILEC processes and purported associated costs, and determine a PIC change rate based on the cost of using the most technologically efficient system. ILECs should not be allowed to charge a fee higher then this determined amount."[22] Moreover, we support ASCENT's recommendation that "[U]ntil such time as a cost proceeding may be concluded, … the Commission should act to establish an interim PIC change safe harbor at … $1.49."[23]

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[18] *Id.* at ¶ 32 (Footnote omitted).
[19] *See*, AT&T Comments at 6-10 and ASCENT Comments at 3 – 7.
[20] Verizon Comments at 2.
[21] NASUCA Comments at 5 (cite omitted)
[22] WorldCom Comments at 7.
[23] ASCENT Comments at 16.

As noted by NASUCA, "[T]here is as much of a basis for the Commission to adopt a carrier change charge safe harbor of $1.49 (or less) as there was to adopt the $5 charge in 1984."[24]

The Commission Should Not Include An Overly-Broad Spectrum of Expenses Within the Cost-Based PIC Change Charge

The same LECs that resisted this proceeding and argue to maintain the *status quo* also argue that if the Commission does move to a cost-based PIC Change Charge, it must include with the charge all possible costs related to presubscription, including slamming[25] and, apparently, filing comments at the FCC *about* presubscription and slamming.[26] These requests are red herrings. At any time prior to this proceeding, any LEC could have petitioned the Commission for an increase in its PIC Change Charge to account for allegedly unrecovered administrative costs associated with slamming, PIC freezes or any other obligation that may or may not have existed when the LECs set their PIC-change charge. To the best of IDT's knowledge, no carrier submitted such a request, thus strongly suggesting that the LECs did not consider the costs associated with these functions within their PIC Change Charge in the past. Any attempt to raise this issue in this proceeding should be seen for what is: a cynical ploy to confuse the issue and threaten rate increases rather than an attempt to meaningfully addresses the issues raised in CompTel's Petition. The Commission should deny these attempts.

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[24] NASUCA Comments at 4 (footnote omitted)

[25] *See;* "The Commission must consider all of the functions LECs perform that are directly related to their administration of the presubscription process[,]" Sprint Comments at iii; "[S]lamming activity of IXCs has generated additional costs, as have preferred carrier freezes. These costs are inextricably tied to PIC changes and recovery should be allowed through the PIC-change charge." SBC Comments at 3; "If the Commission decides to establish a new safe harbor based on current costs or if it requires the local exchange carriers to file new cost-based rates, the Commission should allow the carriers to recover all relevant costs, including the costs of implementing the PIC change, PIC freeze administration costs, and the costs associated with interexchange-initiated slamming. Cost-based rates should also include recovery of joint and common costs and a reasonable allocation of overhead costs." Verizon Comments at 5.

IDT agrees with those IXC commenters and other interested parties that the Commission should impose a cost-based approach and that cost should not include many of the expenses suggested by the LECs because these are costs faced by all providers, not just LECs. As stated by ASCENT,

> [*A*]*ll carriers*, not merely incumbent LECs, incur real costs in responding to customer inquiries and concerns regarding unauthorized PIC changes and *all carriers* have experienced an increase in the amount of time spent with customers as a result of the Commission's slamming rules. ***
> [A]bsolutely no justification exists pursuant to which incumbent LECs alone might be allowed to minimize their own costs of complying with those rules by over-recovering PIC change costs from their competitors.[27]

IDT also agrees with WorldCom that "ILECs should not be permitted to include the costs associated with other services, such as their PIC freeze offerings …. [C]onsumers should not be forced to bear the additional costs for services they have neither requested nor received."[28]

Existing PIC Change Charges Are Not Cost-Based

The above-mentioned LEC arguments, which seem based on the premise that existing PIC-change charges are based on some sort of actual cost, fall apart upon an examination of LEC PIC-change charge rates, which are so inconsistent – within the industry and even within individual companies - as to be virtually arbitrary. The following examples demonstrate IDT's point.[29] Of the 33 different states where Verizon offers local exchange service, it charges 13 different rates for a PIC change fee, at rates ranging from $3.20 to $5.00. In those same states, Verizon charges 14 different LPIC

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[26] "Categories of common costs include legal, executive, marketing and additional overhead costs." NTCA Comments at 2-3.
[27] ASCENT Comments at 10.
[28] WorldCom Comments at 5 (footnote omitted).
[29] All of the following information regarding Verizon's PIC and LPIC rates and policies is taken from Verizon's website: http://www22.verizon.com/wholesale/lookup/piccharges/all/0,4378,3-SS,00.html .

(IntraLATA) change fees, ranging from $1.75 to $5.00.[30] Where a subscriber submits a two-PIC change on the same order, Verizon charges 21 different rates, ranging from $3.20 to $10.00.

In its addition to these rates, Verizon's policy toward two-PIC changes varies as well. In 18 of the 33 states, Verizon's two-PIC charge is the cost of the PIC charge *in addition to* the cost of the LPIC charge; in 12 of the states, Verizon's two-PIC charge is *only* the cost of the one PIC change; and in three of the states, Verizon's policy is *more than* the cost of a single PIC change but *less than* the cost of the individual PIC and LPIC combined. Since it is commonplace that regional support groups handle problems,[31] it simply defies logic that charges would vary so greatly within the same company if rates were based on actual cost. IDT simply refuses to believe that Verizon's cost for a two-PIC change varies from $10.00 in West Virginia to $3.20 in Kentucky, yet this is what the company charges. The Commission should disregard the fiction set forth by the LECs that their PIC Change Charges are based on cost and reduce this figure to permit cost recovery but prohibit profiteering at the expense of unwitting consumers and hostage carriers.

LECs Receive Double-Recovery When They Impose A Double-PIC Charge for The Simultaneous Change Of Multiple PICs

Recognizing that many subscribers request a simultaneous two-PIC change, the Commission asked whether a LEC should be permitted to charge for each individual change or whether the LEC should be permitted to charge a fee based on some alternate reasoning. IDT agrees that "Only if the ILECs are able to show that the costs are significantly different for changing both inter- and intraLATA carriers at the same time

[30] In 11 of the States, the PIC and LPIC charge is different.

should greater carrier change charges be imposed."[32] Additionally, we are of the opinion that "[T]he ILEC does not incur double the cost of a single PIC change when a customer switches both interLATA and intraLATA toll at the same time."[33] Moreover, we support the approach taken by Sprint whereby "[W]hen a customer changes both the intraLATA PIC and interLATA PIC simultaneously, the total PIC-change charge for this transaction is the same as the charge imposed when a customer changes the interLATA PIC alone."[34]

In response to the Commission's concern, IDT recommends that the Commission review PIC change rates in two separate scenarios and set rates accordingly: where a single PIC change is requested and where a simultaneous two-PIC change[35] is requested. Any increased charge for a simultaneous two-PIC change should be limited to the additional actions reasonably associated with the second PIC change: to allow otherwise would be to permit unreasonable double recovery.

IDT's position is based on its examination of the RBOCs existing PIC-change charge rates and policies, which demonstrate that there is no rational relationship between the cost of a single PIC change and a simultaneous two-PIC change, often permitting double- and/or over recovery when a subscriber requests a simultaneous two-PIC change. As demonstrated in the above examples, LEC PIC Change Charges vary greatly when a subscriber changes two PICs at the same time. IDT asserts that any additional charge for a simultaneous two-PIC change should be, at most, proportional to the cost of executing a simultaneous two-PIC change.

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[31] Sprint Comments at 9-10.
[32] NASUCA Comments at 7.
[33] WorldCom Comments at 7.
[34] Sprint Comments at 34.
[35] Or, where applicable, a three-PIC change.

However, an examination of several LEC policies suggest that the proportional, increased cost of executing a simultaneous two-PIC change is $0.00. For example, three of the four RBOCs do not charge some of their subscribers *any* proportional increase for a simultaneous two-PIC change. For example, throughout its incumbent region, Verizon charges the same amount ($5.00) for a simultaneous two-PIC change as for a one-PIC change. Similarly, (with the exception of Nebraska and Utah), Qwest charges the same amount ($5.00) for a simultaneous two-PIC change as for a one-PIC change. That Verizon and Qwest charge no proportional increase throughout most of their incumbent territory strongly suggests that there is little to no increased cost for a simultaneous two-PIC change. Based on existing carrier policies, IDT requests that the Commission carefully scrutinize any claims regarding proportional increases for simultaneous two-PIC Change Charges.

Conclusion

For the reasons stated herein, IDT respectfully requests that the Commission reduce the PIC Change Charge to its cost and eliminate the $5.00 "safe harbor." Since no LEC has introduced sufficient information upon which the Commission can determine cost, IDT requests that the Commission reduce the PIC Change Charge "safe harbor" to the rates charged by BellSouth throughout its incumbent region until such time that a cost proceeding may determine a permanent rate. IDT further requests that the Commission, when determining the permanent rate, exclude LEC costs in a manner consistent with our comments in this proceeding. Finally, IDT requests that the Commission eliminate the PIC Change Charge *in its entirety* when an IXC acquires, through a sale or transfer, either part or all of another telecommunications carrier's subscriber base, when the selling carrier has declared bankruptcy.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience.

Sincerely,

/s/ Carl Wolf Billek

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